OPINIONS OF THE SUPREME COURT

Decisions of That Body, Rendered at Staunton This Week, Summarized.

THE COMMISSION REVERSED

Case Where Railroad May Not Condemn Land—The South and Western Railroad.

(Special to The Times-Dispatch.)

STAUNTON, VA., September 16.—With one exception, the thirteen opinions handed down at Staunton on Thursday last, were in cases originating in Southwest Virginia, and all were argued before the court while in session at Wytheville in June.

The one case constituting the exception was that of the Great Falls Power Company vs. Great Falls and Old Dominion Railroad Company, an appeal from an order entered by the State Corporation Commission granting the railroad company permission to condemn certain parcels of land owned by the power company, which was desired by the railroad company as a terminal for the railroad it is constructing from the Aqueduct Bridge at Washington to the Great Falls of the Potomac, in Fairfax county.

Commission Reversed.

The opinion of the court, written by Judge Harrison, reverses the judgment of the Corporation Commission. Under their charters both of the companies have the power of eminent domain, and it is shown that under the statute it must appear before the land can be condemned in such a case that a public necessity or that an essential public convenience requires that the land shall be taken; and that the land is not essential to the purposes of the corporation from which it is to be taken.

The court is of opinion that it clearly appears that the land is sought by the railroad company as a terminal point on account of the rare scenic features it affords, and because of the attractions it would hold out to pleasure seekers from Washington, and but for the beauty of the scene would most likely have been avoided as offering no inducements to such an enterprise; that more land is sought to be condemned than is necessary for mere terminal purposes; and that it is manifest that the location was selected with no reference to the public use of the road in the matter of freight or the accommodation of the travelling public along its route, but for the purpose of establishing a park overlooking the Great Falls of the Potomac. The charter of the company, it is said, shows that the company was organized for public use in transporting persons and property along its line, and furnishes no warrant for condemning property for the purpose indicated by the record.

A Stronger Case.

A case decided in New York is cited, in which a railroad company was denied the right to condemn private property for the purpose of enabling passengers to obtain a view of the "Whirlpool Rapids" of Niagara, upon the ground that it was not such a public use as would justify condemnation proceedings. The present case is considered by the court much stronger than that, because the Virginia statute requires not merely a public use, but a public necessity.

The court holds that while it may be desirable to furnish sightseers with an opportunity to spend a pleasant day amid wild and rugged surroundings on the banks of the Potomac, viewing its "Great Falls" while strolling in a beautiful park, yet it cannot be said to be a public necessity, demanding the displacement of the power company from its private ownership by compulsory proceedings.

The Corporation Commission is held to have erred in awarding the certificate permitting the condemnation, and its action is, therefore, reversed, its order set aside, and the petition of the railroad company dismissed.

South and Western Road.

Another case decided involving large interests was that of South and Western Railway Company vs. Commonwealth, from the Corporation Court of the City of Bristol. This was a quo warranto proceeding instituted at the relation of private individuals, and in it the South and Western Railway Company was adjudged to have forfeited all its rights, privileges and franchises as a corporation in Virginia, because of its failure to complete thirty miles of its road in Virginia within the time required by its charter.

The Supreme Court, speaking through Judge Buchanan, decides that the Corporation Court did not have jurisdiction of the case, reverses its judgment and dismisses the petition of the relators.

The decision of the case turned upon the construction of conflicting statutes of the Code. The opinion sets forth that under the general provisions of the Code, which are broad enough to embrace a railroad corporation, in such a case as this a court or judge may upon the petition of the Attorney-General or Commonwealth's Attorney, at the relation of any person interested, award a writ of quo warranto against the corporation; while it is provided in the chapter of the Code relating to the State Corporation Commission that the State alone may proceed by writ of quo warranto against an internal improvement company if its works be not commenced and completed within the time prescribed by law.

Matter of Jurisdiction.

It is first decided that though this question was not raised in the trial court, it may be relied on in the Supreme Court, as it relates to the jurisdiction of the trial court, and may not only be raised for the first time in the appellate court, but where it appears that the trial court did not have jurisdiction the appellate court may of its own motion take notice of that fact.

Passing, then, to the construction of the conflicting provisions, it is held that the special provision contained in the chapter relating to the Corporation Commission should be construed as a limitation upon or an exception to the general provisions contained in sections 3022, 3023, 3024 and 1165e, cl. 30 of the Code; and that as under this construction the State alone had authority to institute the proceedings in this case, the Corporation Court of Bristol had no jurisdiction to award the writ of quo warranto upon the petition of private persons, as were the relators.

Another Railroad Case.

In another case, in which the South and Western Railway Company was complainant, the decision was against that company.

The Virginia and Southeastern Railway Company was sought to be enjoined by the South and Western Railway Company from entering upon the property of the latter company and from making or attempting to make surveys and locations for a railroad thereon, and especially from instituting and prosecuting condemnation proceedings against a strip of land 66 feet in width, extending from near Clinchport, in Scott county, to near St. Paul, in Wise county, upon which the railroad of the South and Western was in process of construction.

Upon the appeal from the decree of the Circuit Court of Wise county, dissolving the temporary injunction granted and dismissing on demurrer the bill of the South and Western Company, Judge Whittle, handing down the opinion of the Supreme Court, affirms the lower court, holding that the bill does not present a case for injunctive relief on the theory that irreparable damage will result from the acts complained of, the facts and circumstances constituting the alleged grievance not being specifically set out therein as the rule requires; that every question raised by the bill touching the right of the Virginia and Southeastern Railway Company to condemn any part of the land in controversy can be determined in the condemnation proceedings; and that the South and Western, having an adequate remedy at law, it follows that a bill for injunction does not lie. The court refuses to consider the objection made that the Virginia and Southeastern had not complied with the provision of the Code requiring it to obtain permission from the State Corporation Commission to condemn the property, because such non-compliance was not charged in the bill.

On Fire Insurance.

In Prudential Fire Insurance Company vs. Alley, from the Circuit Court of Wise county, opinion by Judge Buchanan, among other questions raised and passed upon is that in which the "Iron Safe Clause" of the fire insurance policy of the Prudential Fire Insurance Company is construed. That clause requires the person insured to take an inventory of his stock of goods at least once a year, and to keep a set of books showing purchases and sales, all of which must be locked in a fire-proof safe at night, and whenever the building insured is not open for business.

In this case the books kept by Alley are held to have been a substantial compliance with the "Iron Safe Clause." The court says that if the books are kept in such a manner that, with the assistance of those who kept them or understood the system, the amount of purchases and sales can be ascertained, and cash transactions distinguished from credit, it will be sufficient.

The holding of the lower court in this respect and in all others to which error was assigned is held to have been correct, and its judgment in favor of Alley is affirmed.

Dixon vs. Paddock.

Judge Harrison handed down the opinion of the court in Dixon vs. Paddock, from the Circuit Court of Wise county. This suit grew out of the settlement between the partners of the affairs of the Dixon-Paddock Lumber Company, which, besides conducting a general lumber business, had acquired and was operating the Gladeville Railroad. Paddock brought suit, charging that John T. Dixon in settling their partnership accounts had rendered a statement which was not true, and had fraudulently concealed a number of important matters which should have entered into their settlement, and which would have produced a different result greatly to Paddock's advantage.

The court finds that Dixon, concealing from Paddock that he had made a contract in the name of the Dixon-Paddock Company for the sale of the railroad at $33,000, and received $1,000 in cash on account, induced Paddock to agree that Dixon should take the railroad from the firm at $18,000, and it is held that Dixon is liable to make good to Paddock the loss he thereby sustained. Other frauds are shown, such as the buying by Dixon of an engine and caboose for $2,350 for use on the Gladeville railroad, his renting them to the partnership at $80 per month, receiving $1,540 in such rents, and in the settlement charging the engine and caboose as a liability of the firm at $2,500; and charging the firm with practically the entire cost of salaries and office expenses of the office at Ronceverte, when he carried on in the same offices a private competing business, which amounted to two-thirds in volume of the business of the entire office.

The action of the lower court in requiring Dixon to account to Paddock in these matters and its findings are all affirmed by the Supreme Court.

Graves vs. Scott.

In another case, Graves vs. Scott, Judge Keith handed down an opinion reversing the judgment of the Circuit Court of Giles county, holding that in a suit for malicious prosecution, the declaration sufficiently averred that the prosecution alleged to have been maliciously instituted had been terminated, when it stated that at the place and time designated for trial the defendants refused to be sworn and give any evidence touching the supposed crime charged in the warrant and failed and refused to offer and produce when called upon any evidence to prove the charge in the warrant; that the justice dismissed the warrant at the cost of the defendants, and caused the plaintiff to be discharged out of custody, fully acquitted of the said supposed offense; and that the defendants have not further prosecuted the complaint, but have deserted and abandoned the same, and the complaint and prosecution is now fully ended. This decision overrules a former decision of the court in the case of Ward vs. Reasor.

Wise vs. McCormick.

In Wise Terminal Company vs. McCormick, from the Circuit Court of Wise county, the judgment of the lower court is reversed. In this case McCormick, a brakesman, recovered $5,000 damages for injuries received while attempting to board an engine on the yard of the company at Glamorgan, in Wise county. The opinion states that there was a total failure on the part of McCormick to trace actionable negligence to the defendant company.

The Other Cases.

Other cases decided are Spencer vs. Flanary, administrator, from the Circuit Court of Lee county. Affirmed in an opinion by Judge Harrison.

Neece vs. Neece, from the Circuit Court of Dickenson county. Affirmed: opinion by Judge Keith.

Scott vs. Thomas, from the Circuit Court of Floyd county. Affirmed in part and reversed in part; opinion by Judge Keith.

Roberton vs. Wampler, from Wise Circuit Court. Affirmed; opinion by Judge Buchanan.

Commonwealth, for &c, vs. Wampler, from Wise Circuit Court. Affirmed; opinion by Judge Whittle.

Those Sleeve Buttons.

(An acknowledgment.)

A long time I've worn and sometimes have shown,
A pair of sleeve buttons I boast;
That tell of a cause that failed just because
There was nothing to eat on our coast.

They point to a race that this Southland does grace
With a record of courage and daring;
That filled the world's eyes and was wafted the skies,
While Confederate gray they were wearing.

They are gift of a friend on whom I depend
With confidence born of long knowing,
Whose beauty of face and singular grace
She is always unconsciously showing.

Alongside of these there has come 'cross the seas
A Roman gold set worth the seeing,
On which craftsmen of old alike cunning and bold—
Has wrought faces that once had a being.

Now, buttons are small and scarce count at all
If valued for actual cost;
But, when measured by love-sweet gift from above,
Then the metre of lucre is lost.

These witness the truth that somewhere forsooth,
Perhaps in Italia's famed city,
Close some sacred road was a gold-smith's abode,
Where business stagnation stirred pity.

Quick kindled was thought that here might be bought
Some buttons for "dear doctor's" pleasure;
And more than this, too—characteristic of you—
You might add to the jeweler's measure.

Just like you, dear Belle, and I write now to tell
How grateful I am for both thought,
And those beautiful links that hang on the brinks
Of a pair of my cuffs and are caught.

GEORGE ROSS, M. D.

Richmond, Va., August, 1905.

THE INTERSTATE FAIR AT LYNCHBURG

Some of the Things That Will Make It Unusually Attractive.

(Special to The Times-Dispatch.)

LYNCHBURG, VA., Sept. 16.—Entries in the stock department of the Interstate Fair, that will be given in Lynchburg October 3rd, 4th, 5th, and 6th, are coming in very freely. The very finest cattle will be represented, and they will come from six or eight different States.

Secretary Lovelock has just received a letter from Edward Gay Butler, of Berryville, secretary of the Hereford Breeders Association of Virginia, stating that the annual meeting of the Association will be held at Hotel Carroll, in Lynchburg, on the 5th of October, at 3 P. M.

From the number of shows that have already contracted for space on the midway and from the large number of exhibits of vehicles, implements, and farm machinery, it looks as if every available space of open ground, except that actually needed for the public, will be taken up by these people.

It is already known that the Lynchburg City Band has been engaged to furnish music for the Fair, but the Association has now arranged to employ a second band, so as to provide for any possible contingency and to make it sure that there will be music all the time.

As before stated, there will be a balloon ascention, with a thrilling parachute descent by Mr. R. A. Selby, of New York, besides numerous other acts provided by the Association, and the usual programme of races each evening.

In order to properly care for visitors, the association now has a man at work canvassing the city and has already received information that gives assurance of boarding and lodging for five or six hundred persons, and that he will not stop short of two or three times that number.

So much has been said of late about gambling on the Fair grounds and the bad tendencies of many shows, that it may be well to state that in so far as the association is concerned, it has been decided positively that the grounds are to be free from the sale of spiritous liquors, from all forms of immoral shows, and from all forms of gambling.

THE PRIMARY AND SOUTHWEST VIRGINIA

No Such Objection to the Plan As Has Been Stated.

(Special to The Times-Dispatch.)

GATE CITY, VA., Sept. 16.—A general expression from Democrats from every section of Scott county at court here this week, proves there is no such widespread feeling against the primary plan as has been reported. In fact, since the primary, sentiment has changed largely in its favor. The professional politicians are against it, and some well-informed Democrats, who cannot be classed as politicians still object to it, but this class readily concedes that it worked well and has unified the party and infused enthusiasm into the ranks as nothing else could have done. Instead of the southwest sending up a solid delegation against the primary, there would be a very loud protest from its people should a proposition comes up to abolish the plan. The people do not object to the Democratic principle that gives them a potent voice in public affairs.

It has also been reported that the southwest is sore over the defeat of Judge Samuel W. Williams, but in this county such is clearly not the case. The expression here among Democrats shows that it was a hard thing for them to have to choose between an honored and popular southwest gentleman and his wounded ex-Confederate opponent.

In the Circuit Court here this week T. T. Sykes was sentenced to two years in the penitentiary for aiding the four prisoners in escaping from jail a few months ago.

The case against Pearl Yarbel was continued till the November term of court.

Benjamin Osborn, who killed Albert Nash, at Dungannon Sunday evening, has been bound over to answer an indictment, his bond being $50.

ARE REBUILDING STONE BRIDGE

It Was Burned to Keep Sheridan From Crossing the James.

(Special to The Times-Dispatch.)

SUTTON, VA., September 16.—Work is now progressing on the bridge across the James River at Wingina, Nelson county, Va. The former bridge was burned during the war to keep Sheridan and his army from crossing to the Buckingham side.

Seven calvarymen and their horses rode through the bridge and drowned, part of the bridge floor having been taken up. The bridge on the east side was tarred, lightwood, straw, dry grass or hay put in place ready for the torch at any moment.

The river was too high for the Yankees to put in pontoons, and whenever they would venture close to the river the little band of Rebs would throw lead at them. Two of the dead calvarymen and their horses landed on the low grounds of the Monte Video estate, a short distance below Wingina, which in olden days was called Hardwicksville. The Monte Video estate was at that time owned by Chas. Z. Morriss, who assisted in putting fire to the bridge, he having only one hand at the time, having lost his right hand some two years or more before. The Monte Video estate is now owned by W. C. Morriss, son of Chas. Z. Morriss. The large estate has been in the Morris family over a hundred years.

A Frenchman by the name of Du Lather concealed himself on the very high bluff just below the bridge, on the Buckingham side of the river, and shot seven of the Yankees with a long range Mississippi rifle. The wroter of the above was then a boy, but remembers the circumstances as if it were to-day.